

1 ROB BONTA  
 2 Attorney General of California  
 3 MYUNG J. PARK  
 4 Supervising Deputy Attorney General  
 5 KATHERINE GAUMOND, State Bar No. 349453  
 6 CAITLAN MCLOON, State Bar No. 302798  
 7 EMMANUELLE S. SOICHER, State Bar No. 290754  
 8 CECILIA D. SEGAL, State Bar No. 310935  
 9 M. ELAINE MECKENSTOCK, State Bar No. 268861  
 10 Deputy Attorney General  
 11 1515 Clay Street, 20th Floor  
 12 P.O. Box 70550  
 13 Oakland, CA 94612-0550  
 14 Telephone: (510) 879-0299  
 15 Fax: (510) 622-2270  
 16 E-mail: Elaine.Meckenstock@doj.ca.gov  
 17 *Attorneys for Plaintiff State of California*  
 18 (additional counsel on signature pages)

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 21 IN THE UNITED STATES DISTRICT COURT  
 22 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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 24 SAN FRANCISCO DIVISION

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 28 STATE OF CALIFORNIA, STATE OF  
 COLORADO, STATE OF DELAWARE,  
 COMMONWEALTH OF  
 MASSACHUSETTS, STATE OF NEW  
 JERSEY, STATE OF NEW MEXICO,  
 STATE OF NEW YORK, STATE OF  
 OREGON, STATE OF RHODE ISLAND,  
 STATE OF VERMONT, and STATE OF  
 WASHINGTON,

Plaintiffs,

v.

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4:25-cv-04966-HSG

**PLAINTIFFS' OPPOSITION TO  
MOTION TO INTERVENE BY  
AMERICAN FREE ENTERPRISE  
CHAMBER OF COMMERCE ET AL.**

(Administrative Procedure Act,  
5 U.S.C. § 701 et seq.; 5 U.S.C. § 801 et seq.)

Date: October 23, 2025

Time: 2:00pm

Judge: Hon. Haywood S. Gilliam, Jr.

Defendants.

## STATEMENT OF ISSUES TO BE DECIDED

Should the Court deny the motion filed by American Free Enterprise Chamber of Commerce (AmFree) and several Corn Growers Associations (collectively, Movants) to intervene either as of right or permissively in the above-captioned matter? If the Court grants the motion, should it nonetheless place reasonable conditions on Movants' participation and on this litigation to ensure Plaintiffs are not prejudiced and the case proceeds efficiently?

## INTRODUCTION

This litigation concerns the legality of Congress’s unprecedented attempt, absent administrative or judicial process, to retroactively annul three waivers of Clean Air Act preemption that the U.S. Environmental Protection Agency (EPA) issued to California. Intervention should be denied because Movants’ grievances against the EPA waivers are different than this case’s dispute over the validity of later-enacted congressional resolutions. Under the Clean Air Act, EPA’s waivers can be reviewed in the appropriate court of appeals on petitions filed within 60 days of a waiver’s publication in the Federal Register. 42 U.S.C. § 7607(b)(1). Movant AmFree and others filed such petitions seeking review of the three waivers implicated here, and the time to file further challenges to those waivers expired months ago. Movants’ request to intervene in this suit to safeguard the same interests that animate their waiver litigation should be rejected.

Movants may not intervene as of right, for two reasons. First, they fail to demonstrate a protectable interest in the congressional resolutions—as opposed to the lawfulness of the EPA waivers—that would be impeded by the disposition in this litigation. Indeed, as to one of the resolutions at issue (the Omnibus resolution), Movants proffer no cognizable interest at all. Second, the United States adequately represents all of Movants’ interests.

Movants should not be granted permissive intervention, either. Their intervention risks injecting extraneous issues into the litigation, to Plaintiffs' prejudice. That a second group of similarly situated trade associations has moved to intervene—with the possibility that more might still file—only heightens this risk. To avoid prejudicing Plaintiffs, the Court should deny permissive intervention and allow Movants to present their views as *amici curiae* instead.

Alternatively, if the Court is inclined to grant intervention, Plaintiffs respectfully request that the Court place reasonable limitations on Movants' participation along with certain procedural conditions on all parties to ensure the case proceeds efficiently.

## BACKGROUND

Earlier this year, Congress took the unprecedented and unlawful step of targeting, with resolutions of “rule” disapproval (Resolutions), three Clean Air Act orders that waived preemption of certain emissions standards set by California for new motor vehicles sold in the State. Compl. (ECF 1) ¶¶ 5-7. California has been setting such standards for more than half a century. *Id.* ¶ 33. Since 1967, when Congress generally preempted States from setting new motor vehicle standards, California has done so pursuant to the preemption waivers that EPA must grant, subject to certain limited conditions. *See* 42 U.S.C. § 7543(b)(1).

Each of the three waivers targeted by the Resolutions permits California to enforce specific amendments to its regulatory program, adopted to reduce harmful pollution and protect public health and welfare. These waivers similarly allow other States to adopt and enforce California's regulations as their own. *Id.* § 7507. The first waiver, published in April 2023 (88 Fed. Reg. 20,688 (Apr. 6, 2023)), authorizes the Advanced Clean Trucks (ACT) regulation which requires gradual increases in sales of medium- and heavy-duty zero-emission vehicles in California beginning with model year 2024. Compl. ¶ 44. The second and third waivers, published in early January 2025, authorize the Advanced Clean Cars II (ACCII) and Omnibus regulations, respectively. 90 Fed. Reg. 642 (Jan. 6, 2025); 90 Fed. Reg. 643 (Jan. 6, 2025). ACCII gradually strengthens California's longstanding emission standards for light-duty vehicles (passenger cars and light trucks), including the State's zero-emission-vehicle sales requirements and the exhaust emission standards for criteria pollutants, requiring reductions in smog-forming oxides of nitrogen (NOx) and particulate matter. Compl. ¶ 43. The Omnibus regulation likewise strengthens longstanding state emission standards, requiring substantial reductions in NOx exhaust emissions from new medium- and heavy-duty vehicles. *Id.* ¶ 45. All three of these regulations are crucial parts of California's comprehensive plan to improve the air Californians breathe and meet state and federal air quality standards. *Id.* ¶ 46 (noting tens of millions of Californians are affected by

1 some of the worst air quality in the Nation).

2 The unlawful targeting of these waivers began months (or, in the case of ACT, years) after  
 3 the waivers were granted. EPA reversed the view it had consistently held for decades—shared by  
 4 the Government Accountability Office—and suddenly declared, without any explanation, that  
 5 waivers were “rules” within the meaning of the Congressional Review Act (CRA). *Id.* ¶¶ 65, 68-  
 6 70, 73-77. Relying on EPA’s misinterpretation, Congress enacted the Resolutions that purport to  
 7 invalidate the three waivers. *Id.* ¶¶ 94, 103, 108. The President signed the Resolutions on June 12,  
 8 2025. *Id.* ¶ 113. Plaintiff States sued the United States the same day. Plaintiffs seek, *inter alia*, to  
 9 have the Resolutions declared unconstitutional for violation of separation of powers and  
 10 federalism principles. *Id.* ¶¶ 153-178.

## 11 **LEGAL STANDARD**

12 To intervene as of right under Federal Rule of Civil Procedure 24(a)(2), a movant must  
 13 show that: (1) the motion is timely; (2) the movant has a “significantly protectable interest” in the  
 14 subject of the action; (3) disposition of the action may, as a practical matter, impair or impede the  
 15 movant’s ability to protect that interest; and (4) the movant’s interest is inadequately represented  
 16 by the existing parties. *E. Bay Sanctuary Covenant v. Biden*, 102 F.4th 996, 1001 (9th Cir. 2024).  
 17 “Failure to satisfy any one of the requirements is fatal to the application.” *Freedom from Religion*  
 18 *Found., Inc. v. Geithner*, 644 F.3d 836, 841 (9th Cir. 2011).

19 To intervene permissively under Federal Rule of Civil Procedure 24(b)(1), a movant must  
 20 show that: (1) independent grounds for jurisdiction exist; (2) the motion is timely; and (3) the  
 21 movant’s claim or defense shares a common question of law or fact with the main action. *United*  
 22 *States v. City of Los Angeles*, 288 F.3d 391, 403 (9th Cir. 2002). In exercising its discretion on  
 23 this issue, a court must consider whether the intervention would “unduly delay or prejudice” the  
 24 existing parties. Fed. R. Civ. P. 24(b)(3).

25 Though courts construe Rule 24 broadly in favor of intervention, the movant bears the  
 26 burden of establishing that the Rule’s requirements are met. *See E. Bay Sanctuary Covenant*, 102  
 27 F.4th at 1001 & n.2. Conclusory allegations will not suffice. *See Sw. Ctr. for Biological Diversity*  
 28 *v. Berg*, 268 F.3d 810, 820 (9th Cir. 2001).

## ARGUMENT

## **I. MOVANTS DO NOT MEET THE STANDARD FOR INTERVENTION AS OF RIGHT**

**A. Movants lack a protectable interest that could be impeded by disposition of this case**

Movants assert multiple interests in an effort to identify a protectable one that could be impeded here. None suffices.

Movants claim their “members have a legally protectable right not to suffer the effects of unlawful EPA actions.” Mot. 11:21-22; *see also Cal. Dep’t of Toxic Substances Control v. Jim Dobbas, Inc.*, 54 F.4th 1078, 1087-88 & n.8 (9th Cir. 2022) (interpreting Rule 24(a)(2) as requiring a *legal* interest). In support, they cite 42 U.S.C. § 7607(b)—the Clean Air Act’s judicial review provision—which protects interests in the legality of Clean Air Act actions. But Movants’ claimed interest lacks “a relationship” with “the claims at issue” in this litigation because the lawfulness of EPA’s waiver actions is not implicated by Plaintiffs’ claims. *Cal. Dep’t of Toxic Substances Control*, 54 F.4th at 1088 (cleaned up). To illustrate, Movants appear to believe that EPA’s waiver decisions were unlawful because, in their view, the relevant California standards are “commercially unfeasible.” Mot. 1:26. That claim could be appropriately raised in a petition for review of a waiver pursuant to 42 U.S.C. § 7607(b). *See Motor & Equip. Mfrs. Ass’n v. Nichols*, 142 F.3d 449, 463 (D.C. Cir. 1998) (“technological feasibility” at issue “in the waiver context”). But whether the waiver decisions complied with the Clean Air Act is irrelevant in this suit, where Plaintiffs challenge *other* actions by EPA. *Compare* Mot. 1:22-23 (claiming California’s “standards are prohibited by the Clean Air Act”), *with* Compl. ¶¶ 114-188 (raising no Clean Air Act questions).

Nor will any interest in the lawfulness of the waivers be impaired by the disposition of this case. This “litigation does not prevent any individual from initiating suit against” any EPA waiver. *City of Los Angeles*, 288 F.3d at 402. Indeed, AmFree has protected its interests in the lawfulness of EPA’s waiver actions by opting to challenge two of them through petitions for review. Mot. 7:25-8:1 & n.8. Contrary to AmFree’s conclusory assertions, this litigation will not impede those pending waiver lawsuits. Mot. 12-13. A victory for Plaintiffs here—*e.g.*, a

1 determination that the Resolutions were not constitutionally enacted—will not alter AmFree’s  
 2 legal claims against EPA’s waiver decisions. It is hard to imagine how, for example, disposition  
 3 of Plaintiffs’ separation-of-powers challenge to the Resolutions would “creat[e] Ninth Circuit  
 4 precedent” relevant to AmFree’s arguments challenging the waivers under the Clean Air Act.  
 5 Mot. 13:4-5. Nowhere do Movants address that analytical gap.<sup>1</sup>

6 AmFree’s reference to its lawsuit challenging an agreement between the California Air  
 7 Resources Board (CARB) and truck manufacturers (Mot. 13:12-23) fares no better. AmFree filed  
 8 that case six months before the Resolutions at issue here were signed. Compl., *Am. Free Enter.*  
 9 *Chamber of Com. v. Engine Mfrs. Ass’n*, No. 3:24-cv-50504 (N.D. Ill. filed Dec. 16, 2024), ECF  
 10 1. True, a ruling in Plaintiffs’ favor might require AmFree to revert to the complaint it originally  
 11 filed (see Mot. 13:17-18 (citing amended complaint filed on June 30, 2025 (ECF 103))), unless  
 12 the case is dismissed (see Def. Steven S. Cliff’s Mot. to Dismiss Pl.’s Compl., *Am. Free Enter.*  
 13 *Chamber of Com. v. Engine Mfrs. Ass’n*, No. 3:24-cv-50504 (N.D. Ill. filed Aug. 14, 2025), ECF  
 14 125). But AmFree cites no authority for the proposition that it has a protected interest in avoiding  
 15 that result.

16 Even assuming an interest in the lawfulness of the EPA waivers were sufficient to support  
 17 intervention here, Movants have not met their burden to establish a concrete interest in all three  
 18 targeted waivers. See *E. Bay Sanctuary Covenant*, 102 F.4th at 1002 (alleged interest must be  
 19 concrete). No Movant other than AmFree petitioned for review of any of these waivers (Mot.  
 20 12:10-13), and AmFree itself declined to seek judicial review of the waiver for ACT (Mot. 12:12-  
 21 13). Thus, Movants seek to intervene as of right based on interests they opted not to protect  
 22 through the established means for doing so under the Clean Air Act. In addition, the motion does  
 23 not establish that *any* of the Movants has an interest in the lawfulness of the Omnibus waiver,  
 24 much less the Omnibus Resolution. Movants claim such an interest based on a

25 \_\_\_\_\_  
 26 <sup>1</sup> Movants may point out on reply that EPA has moved to dismiss AmFree’s petitions for  
 27 review of the ACCII and Omnibus waivers. That does not support intervention. AmFree could  
 28 request its cases be held in abeyance pending the resolution of this matter, to protect its interests  
 should Plaintiffs prevail here. If AmFree concedes to dismissal, that only increases the likelihood  
 that AmFree will attempt to inject its arguments concerning the legality of the waivers into this  
 suit, improperly expanding its scope. See *infra* 7:17-8:3.

1 mischaracterization of the Omnibus regulation as setting NOx emissions standards “so low that,  
 2 in practice, manufacturers are incentivized to sell electric vehicles and engines to comply.” Mot.  
 3 4:4-5; *see also id.*, Ex. C ¶ 14 (incorrectly describing Omnibus regulation as requiring increases  
 4 in “share of electric powertrains sold in California”). But the single sentence from California’s  
 5 rulemaking documents on which that claim is based is not even about the stringency of the NOx  
 6 emission standards.<sup>2</sup> Rather, it refers to credits that manufacturers could choose to earn as an  
 7 alternate means of compliance, primarily in early model years that have already ended.<sup>3</sup> Nothing  
 8 in that sentence establishes that Movants have any ongoing interest in the Omnibus regulation.

9       Finally, Movants assert an interest in defending the legality of measures they supported.  
 10 Mot. 12:7-8. But the only support for the Resolutions identified are two website posts applauding  
 11 Congress’s actions *after the fact*. *See* Mot. 8:1 & n.9. To the extent Movants cite deeper  
 12 engagement similar to that undertaken by the intervenors in *Idaho Farm Bureau Federation v.*  
 13 *Babbitt, Sagebrush Rebellion, Inc. v. Watt*, and *Idaho v. Freeman* (cited at Mot. 12), that  
 14 engagement once again relates to the waivers—and then, only one of them—not the post-waiver  
 15 actions and Resolutions at issue here. *See* Mot. 7:20-25.

16       **B. Movants’ interests are adequately represented by Federal Defendants**

17       A “presumption of adequacy of representation” arises when a proposed intervenor and an  
 18 existing party share the “same ultimate objective,” or when “the government is acting on behalf  
 19 of a constituency that it represents.” *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003).  
 20 “This presumption of adequacy is nowhere more applicable than in a case where the Department  
 21 of Justice deploys its formidable resources to defend the constitutionality of a congressional  
 22 enactment.” *Freedom from Religion Found., Inc.*, 644 F.3d at 841.

23       Movants make no mention of this presumption. Instead, they seek to avoid it by arguing  
 24 that their objectives “may diverge” from those of the federal government at some point, citing the

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25       <sup>2</sup> CARB, *Omnibus Program Initial Statement of Reasons*, at I-36 (June 23, 2020),  
 26 <https://perma.cc/32CP-SSV8> (discussing “proposed revisions to the ABT [averaging, banking,  
 27 and trading] program”).

28       <sup>3</sup> *Id.* at I-36 (cross-referencing “Chapter III, Section A.7”); *id.* at III-73 (proposing to  
 29 allow transfer of “credits generated from 2010 through 2021 MY engines”); *id.* at III-76  
 (describing incentives “especially” for “years before” model year 2024).

1 government's history of reversing course on two (out of more than 75) earlier waivers. Mot.  
 2 14:11-17; Compl. ¶ 41.<sup>4</sup> But changing course on an administrative action is not the same as  
 3 changing course on a statute. Most relevant here, should the U.S. Department of Justice later wish  
 4 to refrain from defending the constitutionality of the Resolutions at issue, it would have to submit  
 5 a report to Congress divulging and explaining that decision pursuant to 28 U.S.C.  
 6 § 530D(a)(1)(B)(ii), at which point Movants may renew their motion to intervene, *see Or. Nat.*  
 7 *Res. Council v. Allen*, No. CV 03-888-PA, 2003 WL 27386127, at \*3 (D. Or. Nov. 4, 2003). Put  
 8 simply, Movants' reliance on a limited history of non-analogous actions by the federal  
 9 government fails to render the presumption of adequacy inapplicable. And the possibility of  
 10 "divergent litigation choices" (Mot. 14:25), without more, cannot overcome it. *See Arakaki*, 324  
 11 F.3d at 1086 ("Where parties share the same ultimate objective, differences in litigation strategy  
 12 do not normally justify intervention.").

## 13 **II. MOVANTS DO NOT MEET THE STANDARD FOR PERMISSIVE INTERVENTION**

14 Movants likewise fail to establish that permissive intervention is warranted. As described  
 15 above, Movants' interests center on the lawfulness of the waivers, which are more properly  
 16 vindicated through existing lawsuits under the Clean Air Act (to the extent Movants opted to do  
 17 so to protect their interests). While Movants represent that they will pursue defenses that hew to  
 18 Plaintiffs' claims, their intervention motion provides strong indications that they are likely to  
 19 raise certain facts or issues that stray beyond them, prejudicing Plaintiffs. For example, Movants  
 20 seem to want to litigate the lawfulness of EPA's waiver decisions, which is not at issue here. *E.g.*,  
 21 Mot. 1:22-23 (claiming California's "standards are prohibited by the Clean Air Act"); *id.* at 1:26-  
 22 28 (asserting standards are "commercially unfeasible" and have had various adverse effects); *id.*  
 23 at 14:18-19 (complaining courts have not "reached the merits of the underlying statutory question  
 24 whether [certain waivers] comply with the Clean Air Act"). Movants also offer argumentative  
 25 and incorrect characterizations of myriad other issues that are unrelated to this litigation,  
 26 including the legality of an agreement AmFree is challenging elsewhere (*id.* at 8:2-9), the costs

27 <sup>4</sup> Movants incorrectly assert that "the Bush EPA denied the ACC I waiver in 2008" and  
 28 "the Obama EPA granted it in 2013." Mot. 14:15-16. The 2008 denial involved a different waiver  
 request that was granted in 2009. 74 Fed. Reg. 32,744 (July 8, 2009).

1 and benefits of electric vehicles (*id.* at 4:8-5:1; *id.* at 6:10-28), and the operation of California  
 2 regulations (*supra* 5:22-6:8 (discussing Movants' mischaracterization of Omnibus NOx  
 3 standards)). But “[i]ntervention cannot be used as a means to inject collateral issues into an  
 4 existing action.” *Apple Inc. v. Iancu*, No. 5:20-cv-06128-EJD, 2021 WL 411157, at \*5 (N.D. Cal.  
 5 Feb. 5, 2021); *accord Arakaki*, 324 F.3d at 1086. To allow otherwise would unduly prejudice the  
 6 adjudication of Plaintiffs’ case. *See* Fed. R. Civ. P. 24(b)(3).

7 Movants’ participation as intervenors may further prejudice Plaintiffs by introducing  
 8 duplication and delay. Already, a second group of industry trade associations representing similar  
 9 interests, and proposing to make similar legal arguments, has moved to intervene defensively.  
 10 *Compare* Mot. 6-7 (alleging economic harms to fuel producers and others), *with* Am. Fuel &  
 11 Petrochemical Mfrs. et al. (AFPM) Mot. to Intervene (ECF 61) 7-8 (same); *compare also* Mot.,  
 12 Ex. I at 11-14, 16-18 (proposed motion to dismiss making arguments under Section 805 of the  
 13 CRA, standing doctrine, and the political question doctrine), *with* AFPM Mot., Ex. E at 6-15  
 14 (same). More putative intervenors may follow. Plaintiffs thus face the prospect of having to  
 15 respond—on behalf of 11 States, each with its own internal approval process—to multiple  
 16 motions involving complex legal questions from several sets of adverse parties. To prevent this  
 17 already complex case from becoming unmanageable, the Court should exercise its discretion and  
 18 decline to permit these Movants intervention. *See Stringfellow v. Concerned Neighbors in Action*,  
 19 480 U.S. 370, 380 (1987) (“[I]n a complex case . . . a district judge’s decision on how best to  
 20 balance the rights of the parties against the need to keep the litigation from becoming  
 21 unmanageable is entitled to great deference.”). The Court could instead allow these Movants to  
 22 present their views in an amicus brief. *See United States v. De Leon Guerrero*, 4 F.3d 749, 756  
 23 (9th Cir. 1993) (affirming district court decision to deny permissive intervention but allow  
 24 movant to participate as amicus curiae). Certainly, *both* sets of entities seeking to intervene as  
 25 defendants should not be allowed to do so. As noted, the two groups of movant-intervenors assert  
 26 similar interests and intend to present similar arguments (which almost certainly overlap with the  
 27 arguments Federal Defendants will make).

1                   **III. IF THE COURT GRANTS INTERVENTION, IT SHOULD IMPOSE REASONABLE CASE**  
 2                   **MANAGEMENT CONDITIONS**

3                   If the Court nonetheless intends to grant these Movants intervention, and in light of the  
 4 concerns identified above, Plaintiffs respectfully request that it impose the following reasonable  
 5 limitations on their participation:

6                   (1) Movants shall not initiate discovery;

7                   (2) Movants' arguments and defenses shall be limited to those claims and issues raised in  
 8 any operative complaints; and

9                   (3) if Movants and AFPM are both granted intervention, they should be required to jointly  
 10 brief and argue all dispositive motions.<sup>5</sup>

11                  In addition, Plaintiffs respectfully request that the Court impose the following procedural  
 12 conditions on all parties, including all intervenors:

13                  (1) the parties must meet and confer at least two weeks before the filing of any dispositive  
 14 motion and submit a joint proposed briefing schedule to the Court at least one week before the  
 15 motion's filing; and

16                  (2) the combined total page limit of any intervenor briefs on any dispositive motion must be  
 17 limited to two-thirds of the page limit allowed to the original parties that the intervenor is  
 18 supporting. In other words, defendant-intervenors would, collectively, be limited to two-thirds the  
 19 pages available to Federal Defendants, and plaintiff-intervenors would, collectively, be limited to  
 20 two-thirds the pages available to Plaintiff States.

21                  Such conditions are authorized under Federal Rule of Procedure 24(a) and 24(b), are  
 22 routinely applied, and will help promote judicial efficiency. *See Stringfellow*, 480 U.S. at 382-83  
 23 & n.2 (Brennan, J., concurring in part and concurring in the judgment) (confirming district courts  
 24 have discretion to limit intervention as of right and even more discretion to limit permissive  
 25 intervention (citing Advisory Committee Notes, Fed. R. Civ. P. 24)); *Defenders of Wildlife v. U.S.*  
 26 *Fish & Wildlife Serv.*, Nos. 21, 26, 17, 2021 WL 4552144, at \*3 (N.D. Cal. May 3, 2021) (barring

27                  <sup>5</sup> This should not pose any practical difficulty, as the counsel who signed AFPM's papers  
 28 also works at a firm representing Movants. *See Bradley A. Benbrook, Hicks Thomas,*  
<https://perma.cc/LNP5-MVY4> (last visited Aug. 19, 2025).

1 defendant-intervenors from initiating discovery and directing parties to meet and confer on case  
 2 schedule allowing for efficient adjudication of anticipated motion to dismiss and motions for  
 3 summary judgment); *California v. Health & Human Servs.*, No. 17-cv-05738-HSG, 2017 WL  
 4 6731640, at \*9 (N.D. Cal. Dec. 29, 2017) (limiting issues in the case to those raised by the  
 5 original parties).

## 6 CONCLUSION

7 For the foregoing reasons, Plaintiffs respectfully request that the Court deny the motion to  
 8 intervene. In the alternative, Plaintiffs respectfully request that the Court impose the case  
 9 management conditions described above to avoid prejudice to Plaintiffs.

10 Dated: August 20, 2025

Respectfully submitted,

11 ROB BONTA  
 12 Attorney General of California  
 13 MYUNG J. PARK  
 14 Supervising Deputy Attorney General

15 /s/ Cecilia D. Segal  
 16 CECILIA D. SEGAL  
 17 Deputy Attorney General  
 18 455 Golden Gate Ave., Ste. 11000  
 19 San Francisco, CA 94102  
 Telephone: (415) 510-3545  
 Fax: (510) 622-2270  
 E-mail: Cecilia.Segal@doj.ca.gov  
 Attorneys for Plaintiff State of California

20 **PHILIP J. WEISER**  
*21 Attorney General for the State of Colorado*

**KATHLEEN JENNINGS**  
*22 Attorney General of the State of Delaware*

23 /s/ Carrie Noteboom  
 24 CARRIE NOTEBOOM\*  
 Assistant Deputy Attorney General  
 1300 Broadway, 10<sup>th</sup> Floor  
 25 Denver, CO 80203  
 (720) 508-6285  
[26 Carrie.noteboom@coag.gov](mailto:Carrie.noteboom@coag.gov)

27 By: /s/ Vanessa L. Kassab  
 28 IAN R. LISTON  
 Director of Impact Litigation  
 RALPH K. DURSTEIN III  
 VANESSA L. KASSAB\*  
 Deputy Attorneys General  
 Delaware Department of Justice  
 820 N. French Street  
 Wilmington, DE 19801  
 (302) 683-8899  
[29 vanessa.kassab@delaware.gov](mailto:vanessa.kassab@delaware.gov)

1 **ANDREA JOY CAMPBELL**2 *Attorney General for the Commonwealth of  
Massachusetts*3 /s/ Seth Schofield4 SETH SCHOFIELD \*  
Senior Appellate Counsel  
5 JON WHITNEY\*  
Special Assistant Attorney General  
6 Energy and Environment Bureau  
Office of the Attorney General  
7 One Ashburton Place, 18th Flr.  
Boston, Mass. 02108  
(617) 727-2200  
[seth.schofield@mass.gov](mailto:seth.schofield@mass.gov)  
[jon.whitney@mass.gov](mailto:jon.whitney@mass.gov)11 **MATTHEW J. PLATKIN**12 *Attorney General for the State of New Jersey*13 /s/ Lisa J. Morelli14 LISA J. MORELLI  
Deputy Attorney General  
15 New Jersey Division of Law  
25 Market Street  
16 Trenton, New Jersey 08625  
(609) 376-2740  
[Lisa.Morelli@law.njoag.gov](mailto:Lisa.Morelli@law.njoag.gov)18 **RAÚL TORREZ**19 *Attorney General for the State of New  
Mexico*21 /s/ William Grantham22 WILLIAM GRANTHAM\*  
Assistant Attorney General  
23 408 Galisteo Street  
Santa Fe, New Mexico 87501  
(505) 717-3520  
[wgrantham@nmdoj.gov](mailto:wgrantham@nmdoj.gov)1 **CHARITY R. CLARK**2 *Attorney General for the State of Vermont*3 /s/ Hannah Yindra4 HANNAH YINDRA\*  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609  
(802) 828-3186  
[Hannah.Yindra@vermont.gov](mailto:Hannah.Yindra@vermont.gov)11 **LETITIA JAMES**12 *Attorney General for the State of New York*13 /s/ Ashley M. Gregor14 ASHLEY M. GREGOR\*  
Assistant Attorney General  
15 Environmental Protection Bureau  
28 Liberty Street, 19th Floor  
16 New York, NY 10005  
(212) 416-8454  
[ashley.gregor@ag.ny.gov](mailto:ashley.gregor@ag.ny.gov)18 **DAN RAYFIELD**19 *Attorney General for the State of Oregon*21 /s/ Paul Garrahan22 PAUL GARRAHAN\*  
Sr. Assistant Attorney General  
Oregon Department of Justice  
1162 Court Street NE  
23 Salem, Oregon 97301-4096  
(503) 947-4540  
[Paul.Garrahan@doj.oregon.gov](mailto:Paul.Garrahan@doj.oregon.gov)

1 **PETER F. NERONHA**

2 *Attorney General for the State of Rhode  
Island*

3 /s/ Nicholas M. Vaz

4 NICHOLAS M. VAZ\*

5 Special Assistant Attorney General  
Office of the Attorney General  
Chief, Environmental and Energy Unit  
150 South Main Street  
6 Providence, Rhode Island 02903  
(401) 274-4400 ext. 2297

7 [nvaz@riag.ri.gov](mailto:nvaz@riag.ri.gov)

1 **NICHOLAS W. BROWN**

2 *Attorney General for the State of  
Washington*

3 /s/ Alexandria Doolittle

4 ALEXANDRIA K. DOOLITTLE\*

5 Assistant Attorney General  
Office of the Attorney General  
P.O. Box 40117  
6 Olympia, Washington 98504-0117  
(360) 586-6769

7 [Alex.Doolittle@atg.wa.gov](mailto:Alex.Doolittle@atg.wa.gov)

8

9 \*Admitted pro hac vice

10 Pursuant to Local Rule 5-1(i), I attest that all signatories to this document concurred in its filing.

11

12 /s/ Cecilia D. Segal

13 Cecilia D. Segal

14 Counsel for Plaintiff State of California

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